

**Docket No.:** 03-0659  
**Bench Date:** 06-29-04  
**Deadline:** 06-30-04

## **MEMORANDUM**

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**TO:** The Commission

**FROM:** John D. Albers, Administrative Law Judge

**DATE:** June 23, 2004

**SUBJECT:** MidAmerican Energy Company  
Verified Petition for Declaratory Ruling

**RECOMMENDATION:** Deny the application for rehearing filed by MidAmerican Energy Company on June 10, 2004 as it pertains to Docket No. 03-0659.

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On May 11, 2004, the Commission entered an Order in Docket No. 03-0659 answering certain questions posed by MidAmerican Energy Company ("MEC") in a petition for a declaratory ruling. The Order found that MEC is precluded by the Public Utilities Act ("Act") from selling gas at competitive prices within its Illinois service territory without prior Commission approval. The Order stated further that MEC is also precluded by the Act from selling gas at competitive prices in that portion of Illinois where it has not traditionally provided service. Because MEC had engaged in both types of sales for many years contrary to law, the Commission also entered on May 11, 2004 an Initiating Order to determine the appropriate remedies and/or sanctions. The Initiating Order was assigned Docket No. 04-0392.

On June 10, 2004, MEC filed a pleading entitled "Combined Application for Rehearing and Request to Revoke Orders" ("Application") in both dockets. On June 18, 2004, the People of the State of Illinois ("AG") and the Citizens Utility Board ("CUB") jointly filed in both dockets a pleading opposing the Application. This memorandum only pertains to the Application as it relates to Docket No. 03-0659. Administrative Law Judge Michael Wallace has submitted a memorandum regarding the Application as it relates to Docket No. 04-0392.

MEC's Application fails to offer any valid reason to justify granting rehearing. MEC relies on arguments that were considered and rejected in the Order and complains about the Order's discussion of statutory provisions with which it disagrees. MEC claims further that the Order's criticism of its illegal actions is unwarranted. Also among the arguments raised by MEC is the assertion that Senate Bill ("SB") 2525, which is being considered by Governor, would impact the findings in the Commission's Order

and the Commission should therefore grant rehearing and wait to see whether the Governor signs the bill. But as the AG and CUB suggest, it is uncertain whether the bill that MEC reviewed during the drafting stage accomplishes what MEC believes. In any event, reliance on SB 2525 is premature in that it is not law. Overall, the Application depends on strained readings of the Act and the repetition of previously considered arguments. Accordingly, MEC's Application should be denied.

JDA